

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Communications Assistance for Law	)	ET Docket No. 04-295
Enforcement Act and Broadband Access and	)	
Services	)	RM-10865

**REPLY COMMENTS OF  
University of Wisconsin-Madison**

**Introduction and Summary**

The University of Wisconsin-Madison respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.<sup>1</sup> The University of Wisconsin-Madison supports the comments filed by the Higher Education Coalition and submits this reply to amplify several points based on its own experience and circumstances.

The University of Wisconsin-Madison has the following issues and concerns regarding this legislation. First, current University of Wisconsin-Madison processes for responding to law enforcement surveillance requests are adequate for both the institution and for the law enforcement agencies. Second, the FCC should clarify that the private networks operated by colleges, universities, and research institutions are exempt from CALEA. And third, if CALEA applies to the University of Wisconsin-Madison's broadband network, potential significant costs may be

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<sup>1</sup> *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) ("*Order*").

incurred by the institution, thereby impeding its ability to deliver on our academic mission of teaching, service and research.

### **Discussion**

- 1. Current University of Wisconsin-Madison processes for responding to law enforcement surveillance requests are adequate for both the institution and for the law enforcement agencies.**

The University of Wisconsin-Madison's experience with law enforcement requests demonstrates that existing processes are more than adequate to ensure compliance with lawful surveillance requests. This is especially true when examined in light of both the infrequency of such requests and our history of full cooperation. Imposing burdensome new assistance-capability requirements under CALEA is simply not necessary to serve the interests of law enforcement.

The University of Wisconsin-Madison regularly receives and complies with requests from law enforcement agencies. Typically, the university processes about ten official requests annually and we maintain ongoing weekly communications with local law enforcement personnel. In the last ten years, the university is not aware of receiving any requests for surveillance access to our network by law enforcement. Further, in discussions with local law enforcement and telephone services, we are not aware of any surveillance requests for our phone system. Recently we hosted a meeting of IT security specialists from peer institutions and queried them regarding past surveillance requests. All the universities agreed that they have never received a surveillance request. They have received subpoenas, national security letters, and other documents from law enforcement agencies

requesting log information about communications. As with UW-Madison, these universities have processed these requests with the assistance of their legal departments.

**2. The FCC should clarify that the private networks operated by colleges, universities, and research institutions are exempt from CALEA.**

The University of Wisconsin-Madison's internal broadband network provides networking services to faculty, staff, students, and university guests. It should not be subject to CALEA as the legislation exempts private networks. 47 U.S.C. § 1002(b)(2)(B). The Commission acknowledged in the *Order* that private educational networks are exempt from CALEA but it also stated that private networks that are interconnected with a public network or the Internet are subject to CALEA. *Order* at ¶ 36, n.100. The University of Wisconsin-Madison is connected to the public Internet via a combination of leased circuits and dark fiber networks to provide redundancy and diversity. These connections are also used for access to research networks, such as Internet 2, ESNet, and National Lambda Rail, and to enable peering relationships. The connections are shared by other higher education entities in the University of Wisconsin System.

Clarification by the Commission that only commercial entities are covered by the language in footnote 100 would be helpful or as an alternative, the Commission should invoke its discretionary authority under Section 102(8)(C)(ii) of CALEA to exempt higher education and research institutions from compliance with the forthcoming assistance-capability requirements. This exemption would eliminate

unnecessary costs to colleges and universities and would align with congressional intent.

Developing the exemption criteria soon is critical as the 18-month compliance deadline has already begun. The University of Wisconsin-Madison must begin its planning now to reallocate funds from teaching, service and research areas for possible CALEA compliance efforts. The Higher Education Coalition has defined a narrow class of private network operators that should be exempt from CALEA. Using these definitions, the Commission is urged to establish the exemption for higher education and research institutions now.

**3. If CALEA applies to the University of Wisconsin-Madison's broadband network, potential significant costs may be incurred by the institution, thereby impeding its ability to deliver on our academic mission of teaching and research.**

As noted above, the University of Wisconsin-Madison believes that CALEA does not apply to it and adds no value to our work with law enforcement agencies. If the Commission were to apply the language in footnote 100 of the *Order* broadly and conclude that higher education networks such as the University of Wisconsin-Madison's must comply with some or all assistance capability requirements, potential significant costs may be incurred.

If the DOJ or the FCC requires interception of communications by particular users at points *within* the University of Wisconsin-Madison's network, it is likely that many of our campus network equipment would need to be replaced or upgraded and that significant staff costs would be incurred.

The financial burden and cost in staff time for the University of Wisconsin-Madison may be significant if the FCC were to apply CALEA broadly to higher education networks. Given our current adequate processes for law enforcement surveillance, these costs are an unnecessary burden and the costs exceed the benefits. The Commission should exempt higher education institutions and research networks from CALEA. If the FCC applies CALEA to our network, it should apply to the Internet connection facilities at the edge of the network, for the reasons stated by the Higher Education Coalition.

## **Conclusion**

The University of Wisconsin-Madison respectfully requests that the Commission clarify that private networks operated by higher education and research institutions are not subject to CALEA, or alternatively grant an exemption under Section 102(8)(C)(ii) of CALEA.

Respectfully submitted,

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Ann E. Stunden  
Chief Information Officer  
University of Wisconsin-Madison  
1210 W. Dayton St.  
Madison WI 53706

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